IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 451 of 2006
Date of decision 18.1.2007

Commissioner of Income Tax II .. Appellant

Versus

Shri Jeeta Khan Prop. .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE VINOD K. SHARMA

PRESENT: Mr.S.K.Garg Narwana, Advocate for the appellant.

M.M.Kumar, J.

The revenue has come in appeal under Section 260(A) of the Income Tax Act,1961 against the order dated 24.4.2006 passed by the Income Tax Appellate Tribunal in ITA No 1167/Chandi/2004.The Tribunal has rejected the appeal of the revenue and upheld the order of the Commissioner of Income Tax dated 31.8.2004 and had set aside the order of assessment dated 26.3.2001 made by the Assessing Officer by making addition of income to the tune of Rs. 48,000/-. The afore-mentioned amount was computed as income as the Assessing Officer has refused to accept the unsecured loan contributed by various persons. The view of the Tribunal emerges from the perusal of para 15 of its order which reads as under:

> " The only ground remains for adjudication is ground no. 1 wherein the addition on account of unsecured loans of Rs. 64,640/- from Sh. Rattan Singh and Rs. 80,000/- from his family members which was deleted by the ld CIT(A) has been challenged on the plea that assessee has failed to prove the identity of these persons. The assessee is an individual engaged

in the business of manufacture of furniture in village Burail, showed income of Rs. 51,675/- which comprises of business income of Shri Mohd. Aslam Khan (minor) at Rs. 26,400/- including rental income. The ld. Assessing Officer made the assessment at an income of Rs. 1,96,335/- on account of alleged unexplained payment made to the Estate Officer, UT Chandigarh towards instalment of SCO No.42. The assessee made payment of Rs. 64,6560/- on 15.2.1997 and Rs. 80,000/- on 18.7.96 to the Estate Officer on account of instalment of SCO No.42, Sector 26, Chandigarh. The ld Assessing Officer has disputed the source of these instalments. The major plea of the assessee is that Rs. 64,660/- was raised as a loan from Sh. Rattan Singh son of Shri Lachhman Dass r/o H.No.1342, Burail, who advanced loan through bank draft for Rs. 64,750/- drawn on his saving bank account no. 530 maintained with Chandigarh State Cooperative Bank, Chandigarh. The assessee filed the affidavit and copy of bank pass book and the creditor confirmed the advancement of loan out of his dairy farming and sales of buffaloes and cows. There is also mention that cow was sold to Sh. Sarfi Mohammed for a sum of Rs. 35,000/- and buffaloes to Sh. Hans Raj and filed the copies of receipts of these amounts. The loan raised was returned in January, 1999. Sh. Rattan Singh could not be produced as he was not available at that time and Assessing Officer showed his inability to give more time being time barring assessment. This fact was not disputed by the revenue that this person was produced before

the ld first appellate authority. As far as confirmation of gift from a relative Mrs. Hurmat w/o assessee and his deceased son Sh. Anwar and daughter-in-law Mrs. Mumtaz, confirmations were fully filed alongwith their credit worthiness. All these persons are income tax assessee and copies of their returns were also filed before the authorities. If all these facts are analysed, identity of these persons is not doubted by the revenue. Undisputedly, assessee provided all the details of the creditors and their credit worthiness was not challenged. None of these persons has denied the respective amounts which has been paid through account pay cheque/pay order/ bank draft/. The ld CIT(A) in view of these facts has very rightly deliberated upon the issue and deleted the impugned additions. The same is upheld. This ground of the revenue is also having no merit."

A perusal of the afore-mentioned finding recorded by the Tribunal shows that question of facts have been determined by the Tribunal by accepting the identity of Rattan Singh who had advanced loan of Rs. 64,660/- to the assessee and other persons.

We have heard learned counsel at some length and are of the view that no question of law warranting admission of the appeal would arise. Once the Tribunal has accepted the identity of the persons who have given loan to the assessee and the transactions are either through bank drafts or cheques then the credit worthiness of those persons has apparently been presumed. Moreover, the relatives of the assessee like Mrs. Hurmat wife of the assessee and his deceased son Shri Anwar and daughter-in-law Mrs.

Mumtaz who have given gifts have fully filed confirmations alongwith their credit worthiness. These persons are even otherwise income tax assessees and copies of their return have also been filed before the authority. The Tribunal has taken specific notice of the fact that no question with regard to the credit worthiness of those persons who had advanced loan to the assessee, was raised before the appellate authority or else-where. These are necessarily all questions of facts as this Court cannot determine the credit worthiness of persons who have advanced loan or given gifts to the assessess nor the question of their identity could be gone into. We believe that no question of law warranting admission of this appeal would arise Therefore, we dismiss the appeal of the]revenue by recording the finding that no substantive question of law has been raised.

(M.M.Kumar)
Judge

(Vinod K. Sharma)
Judge

18.1.2007
okg